IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2387 (M/S) of 2007

Uttarakhand Jal Vidyut Nigam Limited, Ujjawal, Maharani Bagh, GMS Road, Dehradun, through its General Manager (Finance & Accounts)

....Petitioner

Vs

1. Assistant Commissioner of Income Tax Circle-2, Dehradun.
2. Commissioner of Income Tax 13-A, Subhash Road, Dehradun.

.....Respondents

Mr. S.K. Posti, learned counsel for the petitioner assisted by Sri Vinay Kumar Advocate.
Mr. Arvind Vahishth, learned counsel for the respondents.

Dated: - 29-12-2007

Hon'ble B.S. Verma, J.

Supplementary affidavit is taken on record.

Heard Sri S.K. Posti, learned counsel for the petitioner and Sri Arvind Vashisht, learned standing counsel (Income Tax Department) for the respondents.

The petition has filed this writ petition for the following reliefs:-

1. Issue a writ, order or direction in the nature of certiorari calling the records of case and quash the notice dated 6/8-09-2006 (Annexure No.2 to the writ petition).
2. Issue a writ of certiorari quashing the order dated 9-7-2007 passed by the respondent No.1.
3. Issue a writ, order or direction in the nature of prohibition prohibiting the respondent to reassess the petitioner in

pursuance of the notice dated 6/8-09-2006 for assessing year 2002-2003.

4. Issue any other order or direction which this Hon'ble High Court may deem fit and proper in the facts and circumstances the case.
5. Award cost of the petition to the petitioner.

Briefly stated, the petitioner, in substance, is seeking quashing the show cause notice dated 6/8-09-2006 contained in annexure no.2 to the writ petition.

Learned counsel for the petitioner has relied upon the following judgments: -

(1) Calcutta Discount Company Limited Vs. I.T.O. (1961) 41 ITR 191 (SC).
(2) Commissioner Of Income Tax Vs. Kelvinator of India Limited (now known as Whirlpool of India Limited) (2004) 256 ITR 1.
(3) J.B. Bajpai, Huf Vs. Commissioner of Income Tax and another (2004) 269 ITR 40.
(4) Garden Finance Ltd. Vs. Assistant Commissioner of Income Tax (2004) 268 ITR 48.

It is vehemently submitted by the learned counsel for the petitioner that a fresh material was not before the assessing officer for issuing a notice under Section 148 of the Income Tax Act while the assessment was made under Section 143 sub section 3 of the Income Tax Act after proper scrutiny by the assessing officer and it is a change of opinion. Hence, the impugned notice issued is without jurisdiction as there is no concealment of fact on the part of the assessee.

It has been further contended that the petitioner had already filed the objection against the reasons supplied but the objections were decided in cryptic manner and not by the reasoned order.

Sri Arvind Vashist, the learned standing counsel for the respondents submits that on the basis of show cause notice the assessment proceedings against the petitioner have already been completed and the assessment order has been passed by the assessing officer and it has also been served upon the petitioner.

Learned standing counsel for the respondents has relied upon the judgment of Division Bench of this Court passed in writ petition No. 28 of 2007 (M/B) Miss Parparti Mankani VS. The Commissioner of Income Tax, Haldwani and two others wherein the Division Bench of this Court dismissed the writ petition on the ground that the petitioner had alternate remedy for filing statutory appeal.

As the petitioner has alternate remedy of filing an appeal, this Court declines to exercise its discretionary jurisdiction under Article 226 of the Constitution of India.

The writ petition, therefore, is dismissed with the liberty to the petitioner to avail the remedy of appeal against the re-assessment order passed by the assessing officer.

Copy of the order be issued to the learned counsel for the petitioner today on the payment of usual charges.

All applications stands disposed of accordingly.

(B.S. Verma, J)

M.K.